



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.2678 of 2012

and

M.P. (MD)No.1 of 2012

The Management,
Tamil Nadu Civil Supplies Corporation Ltd.,
represented by its Regional Manager,
No.3-1-4, Cumbum Road,
Theni.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Regional Secretary,
Tamil Nadu Civil Supplies Corporation Ltd.,
Anna Trade Union (Regd.No.2934/Chennai),
No.3-1-4, Cumbum Road,
Theni.

3.H.Sankarasubramanian ... Respondents
(R.3 was impleaded vide order of this Court
dated 17.02.2021 in WMP(MD)No.15964 of 2020)

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records, pertaining to the impugned award dated 18.05.2011 in I.D.No.63 of 2003, on the file of the first respondent herein and quash the same.

For Petitioner : Mr.G.Mohan Kumar
for M/s R.Vijaykumar

For Respondents : Mr.C.Senthil Murugan
for R.3

: No Appearance for R.2
* * * * *

ORDER

This Writ Petition is filed seeking for issuance of a writ of Certiorari to call for the records, pertaining to the impugned award dated 18.05.2011 in I.D.No.63 of 2003, on the file of the first respondent herein and quash the same.

<https://hccs.courts.gov.in/hccs/esn>



2. The case of the petitioner is that the third respondent was appointed as Watchman on consolidated pay of Rs.75/- per month on 01.07.1977 and he was ousted from service for want of vacancy with effect from 17.11.1977 and again he was appointed as watchman on consolidated pay of Rs.75/- per month with effect from 21.02.1978. The third respondent was given time scale of pay of Rs.200-5-300 with effect from 01.04.1979 and his services were regularised on the said date. Further, the third respondent completed his probation period on 31.03.1981. Thereafter, the third respondent was temporarily promoted as watchman Grade-I in the time scale of pay of Rs.250-5-330-10-400 with effect from 19.07.1982, as per the proceedings dated 23.10.1982 and thereafter, he was absorbed as packer with effect from 19.07.1982 and as Office Assistant with effect from 21.12.1983 in the same pay scale.

3. While so, the third respondent made a request to include his name in the promotion panel dated 08.04.1991 for conferring Selection grade watchman for the year 1990 and the same was rejected by the Management by an order dated 28.10.2002, on the ground that the employee completes 10 years only on 18.07.1992 in the cadre of Grade-I watchman and he is not within the zone of consideration for conferring selection grade in the said panel.

4. Challenging the said order, the second respondent union on behalf of the third respondent raised an industrial dispute in I.D.No.63 of 2003 before the Labour Court seeking promotion as selection grade watchman with effect from 01.04.1989 with arrears of pay with 9% interest. After adjudication, the award was passed in favour of the respondent 2 and 3 by the Labour Court. Challenging the same, the present writ petition is filed by the petitioner.

5. Learned Counsel appearing for the petitioner would submit that the short issue involved in the present case is as to whether the third respondent was entitled for selection grade from the year 1989 or 1992 and admittedly the the third respondent initially was appointed in the year 1978 as watchman and thereafter, he was given promotion in the year 1982 and he completed the promotional post as selection grade watchman in the year 1992. Admittedly, the selection grade will be awarded, when a person stagnated with the original post, without any promotion on completion of ten years and on completion of 20 years, the special grade will be awarded.

6. Learned Counsel for the petitioner would further submit that originally the third respondent was appointed as watchman and given promotion to the post of watchman Grade-I in the year 1982 and hence, his earlier request for conferring selection grade was rejected by the petitioner. Without considering the settled position of law, the Labour Court, unnecessarily adjudicated the issue and passed the award in favour of the respondents 2 and 3, in law and hence, he would pray for appropriate



orders.

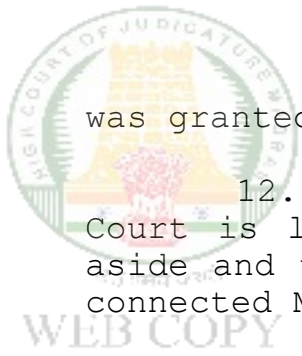
7. Learned Counsel appearing for the third respondent would submit that the similarly situated placed person, viz, Chandran, who was appointed as watchman Grade-II in the year 1977, whereas he was promoted as watchman Grade-I in the year 1984 and thereafter, he was promoted as selection grade watchman in the year 1987 and subsequently, he was promoted as special grade watchman in the year 1997, however, the said benefits were not granted in favour of the third respondent by the petitioner and further, the third respondent made his claim in the year 1991, however, the rejection order was passed in the year 2002 and all the above grounds were properly analysed by the Labour Court and thereafter only passed the award in favour of the respondents 2 and 3, which cannot be interfered with by this Court and hence, the learned Counsel would pray for dismissal of the writ petition.

8. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the third respondent and perused the materials placed on record.

9. The petitioner claimed that he is entitled for selection grade in the promotion post in the year 1989, since his earlier services were regularised in the year 1979. However, on a perusal of the records, it would reveal that the third respondent, initially, was appointed on 01.07.1977 on consolidated pay and ousted from service for want of vacancy on 17.11.1977 and again he was appointed as watchman on consolidated pay of Rs.75/- per month on 21.02.1978 and he was given time scale of pay of RS.200-5-300 with effect from 01.04.1979 and his services were regularised from the said date. Thereafter, the petitioner was given on 19.07.1982 as watchman Gr-I in the time scale of pay of Rs.250-5-330-10-400. Since the petitioner, after appointment, was given first promotion in the year 1982 and when he completed ten years service in the said post without any promotion, he will be entitled to claim selection grade only in the year 1992. Hence, the claim made by the third respondent, before the competent authority, which was subsequently rejected on 28.10.2002, is perfectly in order.

10. Normally, the Labour Court is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence, the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court.

11. However, in the present case, the Labour Court, without considering the settled position, compared the third respondent to some other candidate, who was awarded with selection grade and without discussing the factual matrix of the said person, the Labour Court extended the benefits to the third respondent, which



was granted in favour of the third party and the same is perverse.

12. For the reasons stated above, the award of the Labour Court is liable to be set aside and accordingly, the same is set aside and the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

13. Further, it is also brought to the knowledge of this Court that the third respondent was retired from service in the year 2015 and the terminal benefits were also not settled. Therefore, the petitioner is directed to settle the eligible terminal benefits to the third respondent within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Regional Manager,
Management,
Tamil Nadu Civil Supplies Corporation Ltd.,
No.3-1-4, Cumbum Road,
Theni.

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-13021[F] dated
23/03/2021)

W.P(MD)No.2678 of 2012

22.03.2021

na(CO)

TR(09.04.2021) 4P 4C